

AG Contract No.: KR04-0539TRN
ADOT ECS File: JPA 04-026
Project No.: HRF-SUP-0-800
Project: Main Street
Section: Magma Ave to McKelvyville
TRACS No.: HF100 01C / 01D
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF SUPERIOR

THIS AGREEMENT is entered into 22nd June, 2004, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE TOWN OF SUPERIOR, ARIZONA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State has approved the exchange of \$33,750.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the Town for the **design** of improvements to Main Street from Magma Avenue to McKelvyville, and such funds will be repaid to the State by withholding from Center Arizona Council of Governments (CAAG) federal funds and the obligation authority for federal funds in the amount of \$35,010.00 in Fiscal Year 2004.

4. The State has approved the exchange of \$191,250.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the Town for the **construction** of improvements to Main Street from Magma Avenue to McKelvyville, and such funds will be repaid to the State by withholding from Center Arizona Council of Governments (CAAG) federal funds and the obligation authority for federal funds in the amount of \$198,388.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26911
Filed with the Secretary of State
Date Filed: 06/22/04

Janice K. Brewer
Secretary of State

By: Darryl D. Greenwald

II. SCOPE OF WORK

1. The Town will:

- a. Provide design plans, specifications and such other documents and services required for the improvements contemplated for Main Street, construction bidding and construction.
- b. Be responsible for any additional funds required for design of the project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulation.
- c. Invoice the State in an amount not to exceed \$33,750.00 for reimbursement for the costs of design.
- d. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.
- e. Invoice the State for thirty percent of the project construction cost, at the start of construction.
- f. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.
- g. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.
- h. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage after the City, CAAG, and the State (ADOT) representatives have completed final project review.

2. The State will:

- a. Within 30 days after receipt and approval of a design invoice, reimburse the Town for an amount not to exceed \$33,750.00 for design.
- b. Within 30 days after receipt and approval of a construction invoice, pay for the project construction cost at the start of construction, and for thirty percent of the project construction cost at the thirty percent project construction completion stage, and for thirty percent of the project construction cost at the sixty percent project construction completion stage, and pay ten percent upon completion of construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify

from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the Town, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

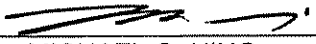
Town of Superior
Town Manager
734 Main Street
Superior, Arizona 85273

10. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF SUPERIOR**STATE OF ARIZONA**

Department of Transportation

By 
MICHAEL O. HING
Mayor

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

Date 5/20/04

Date 10 June 2004

ATTEST

By 
RITA M. WENTZEL
Town Clerk

Date May 20, 2004

RESOLUTION NO. 410

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF SUPERIOR, PINAL COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF SUPERIOR.

WHEREAS, the Mayor and Council of the Town of Superior have authority, pursuant to A.R.S. §11-951 et. seq. to enter into intergovernmental agreements to carry out improvements to Town streets, and

WHEREAS, pursuant to the provisions of Intergovernmental Agreement No. JPA 04-026, being AG Contract No. KR04-0539TRN, improvements to Main Street and the funding arrangements provided for in said Intergovernmental Agreement are in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the Town of Superior is hereby authorized to execute all documents necessary to carry out the provisions of AG Contract No. KR04-0539TRN and ADOT File No. JPA 04-026 for the improvements of Main Street. The Mayor is further authorized to execute any, and all, documents necessary to provide for the funding of said project in accordance with the provisions of the Intergovernmental Agreement.

PASSED AND ADOPTED this 3RD day of June, 2004.

ATTEST:

Rita M. Wentzel
Town Clerk

[Signature]
Mayor

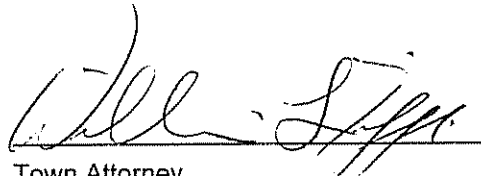
APPROVED AS TO FORM:

Will S. [Signature]
Town Attorney

APPROVAL OF THE TOWN OF SUPERIOR ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF SUPERIOR, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 20TH day of MAY, 2004


Town Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0539TRN (**JPA 04-026**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 16, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section